

Senate Bill No. 271

Passed the Senate September 2, 2003

Secretary of the Senate

Passed the Assembly August 28, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 20572, 20574, 20576, 20577, 20578, and 20581 of, and to add Section 20577.5 to, the Government Code, relating to public employees' retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 271, Soto. Public employees' retirement: termination of contracts.

(1) Existing law authorizes the Board of Administration of the Public Employees' Retirement System to terminate contracts with contracting agencies that fail to pay any installment of contributions, as specified, into the Public Employees' Retirement Fund, a continuously appropriated fund.

This bill would provide that if a contracting agency fails to remit contributions when due, the agency may be assessed interest, costs of collection, and in the case of repeated delinquencies, certain penalties, as specified. Because those amounts would be deposited into the Public Employees' Retirement Fund, the bill would make an appropriation.

(2) Existing law provides that the board has a lien on the assets of a terminated contracting agency, as specified, and that all assets and liabilities of a terminated agency are pooled into a single account.

This bill would provide that a terminated agency shall be liable to the system for any deficit in funding for earned benefits, interest, and costs of collection, as specified.

The bill would also authorize the board to merge certain terminated plans into the terminated agency pool, as specified. The bill would make related changes with respect to assets and liabilities of terminated agencies, and with respect to payments owed to the system upon termination.

The bill would further provide that if a contracting agency has not paid the system for any deficit in funding for earned benefits, members shall be entitled to the benefits to which members of the plan were entitled 36 months prior to the date the agency notified the board of its intention to terminate its contract or 36 months prior



to the date the board notified the agency of its intent to terminate the contract, whichever is earlier.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 20572 of the Government Code is amended to read:

20572. (a) If a contracting agency fails for 30 days after demand by the board to pay any installment of contributions required by its contract, or fails for three months after demand by the board therefor to file any information required in the administration of this system with respect to that agency's employees, or if the board determines that the agency is no longer in existence, the board may terminate that contract by resolution adopted by a majority vote of its members effective 60 days after notice of its adoption has been mailed by registered mail to the governing body of the contracting agency.

(b) Notwithstanding Section 20537, if a contracting agency fails to remit the contributions when due, the agency may be assessed interest at an annual rate of 10 percent and the costs of collection, including reasonable legal fees, when necessary to collect the amounts due. In the case of repeated delinquencies, the contracting agency may be assessed a penalty of 10 percent of the delinquent amount. That penalty may be assessed once during each 30-day period that the amount remains unpaid.

SEC. 2. Section 20574 of the Government Code is amended to read:

20574. A terminated agency shall be liable to the system for any deficit in funding for earned benefits, as determined pursuant to Section 20577, interest at the actuarial rate from the date of termination to the date the agency pays the system, and for reasonable and necessary costs of collection, including attorney's fees. The board shall have a lien on the assets of a terminated contracting agency, subject only to a prior lien for wages, in an amount equal to the actuarially determined deficit in funding for earned benefits of the employee members of the agency, interest, and collection costs. The assets shall also be available to pay actual costs, including attorneys' fees, necessarily expended for collection of the lien.



SEC. 3. Section 20576 of the Government Code is amended to read:

20576. (a) Upon the termination of a contract, the board shall hold for the benefit of the members of this system who are credited with service rendered as employees of the contracting agency and for the benefit of beneficiaries of this system who are entitled to receive benefits on account of that service, the portion of the accumulated contributions then held by this system and credited to or as having been made by the agency that does not exceed the difference between (1) an amount actuarially equivalent, including contingencies for mortality fluctuations, as determined by the actuary and approved by the board, the amount this system is obligated to pay after the effective date of termination to or on account of persons who are or have been employed by, and on account of service rendered by them to, the agency, and (2) the contributions, with credited interest thereon, then held by this system as having been made by those persons as employees of the agency.

(b) All plan assets and liabilities of agencies whose contracts have been terminated shall be merged into a single pooled account to provide exclusively for the payment of benefits to members of these plans. Recoveries from terminated agencies for any deficit in funding for earned benefits for members of plans of terminated agencies, and interest thereon, shall also be deposited to the credit of the terminated agency pool.

SEC. 4. Section 20577 of the Government Code is amended to read:

20577. If, at the date of termination, the sum of the accumulated contributions credited to, or held as having been made by, the contracting agency and the accumulated contributions credited to or held as having been made by persons who are or have been employed by the agency, as employees of the agency, is less than the actuarial equivalent specified in clause (1) of subdivision (a) of Section 20576, the agency shall contribute to this system under terms fixed by the board, an amount equal to the difference between the amount specified in clause (1) of subdivision (a) of Section 20576 and the accumulated contributions. The amount of the difference shall be subject to interest at the actuarial rate from the date of contract termination to the date the agency pays this system. If the agency fails to pay



to the board the amount of the difference, all benefits under the contract, payable after the board declares the agency in default therefor, shall be reduced by the percentage that the sum is less than the amount in clause (1) of subdivision (a) of Section 20576 as of the date the board declared the default. If the sum of the accumulated contributions is greater than the amount in clause (1) of subdivision (a) of Section 20576, an amount equal to the excess shall be paid by this system to the contracting agency, including interest at the actuarial rate from the date of contract termination to the date this system makes payment. The market value used shall be the value calculated in the most recent annual closing.

The right of an employee of a contracting agency, or his or her beneficiary, to a benefit under this system, whether before or after retirement or death, is subject to the reduction.

SEC. 5. Section 20577.5 is added to the Government Code, to read:

20577.5. Notwithstanding Section 20577, the board may merge a plan that has been terminated pursuant to Section 20572 into the terminated agency pool without benefit reduction, or with a lesser reduction, if (a) the board has made all reasonable efforts to collect the amount necessary to fully fund the liabilities of the plan, and (b) the board finds that the merger of the plan into the terminated agency pool without benefit reduction will not impact the actuarial soundness of the terminated agency pool.

SEC. 6. Section 20578 of the Government Code is amended to read:

20578. (a) Except as provided in subdivision (b), on and after January 1, 1991, the rights and benefits of a former employee of a contracting agency which terminated on or before January 1, 1991, or of his or her beneficiary, shall be the same as if the agency had continued as a contracting agency. Any monthly allowance of that individual, or of his or her beneficiary, that was reduced pursuant to Section 20577 because the contracting agency failed to pay the board the amount of the difference shall not be subject to continued reduction on or after January 1, 1991. As of January 1, 1991, benefits shall be paid at the level provided in the contract prior to that reduction. However, if a former employee of a contracting agency that terminated on or before January 1, 1991, becomes employed by another covered employer after the date of termination, including an employer subject to reciprocity, the



benefits shall be calculated by using the highest compensation earned by the individual.

In accordance with Section 20580, an individual who has withdrawn his or her accumulated contributions from the terminated agency shall not be permitted to redeposit any withdrawn contributions upon again becoming a member of this system.

Except as provided in Section 20577.5, benefits shall be reduced proportionally pursuant to Section 20577 prior to the transfer of assets to the pool if the amount of the terminating agency's assets are less than the actuarial equivalent described in clause (1) of subdivision (a) of Section 20576 and if the agency fails to pay the difference.

(b) If a contracting agency has not paid the system for any deficit in funding for earned benefits, as determined pursuant to Section 20577, members shall be entitled to the benefits to which members of the plan were entitled 36 months prior to the date the agency notified the board of its intention to terminate its contract or 36 months prior to the date the board notified the agency of its intent to terminate the contract, whichever is earlier. Entitlement to earned benefits under this subdivision shall be subject to Section 20577.5.

SEC. 7. Section 20581 of the Government Code is amended to read:

20581. If a public agency that terminated its contract enters into a contract for participation in this system, the contract may provide for increase in benefits of persons retired or members who retained rights under this system, if the benefits were reduced under this article at the time of termination, to the level provided in the contract for members, and for redeposit of any contributions for service to the agency not credited under a local system maintained by the agency after termination, withdrawn at termination by a person who becomes a member on contract date. Unless the redeposit is made, the member shall not receive credit for the service. All service rendered prior to the contract date and credited as a result of the contract shall constitute prior service whether or not rendered during the period of the terminated contract. All liabilities for service performed under the terminated contract shall become liabilities of a plan under the new contract. The ratio of assets to liabilities that existed at the time the previous



contract was terminated shall be used to calculate the amount of assets to be transferred to a plan under the new contract.



Approved _____, 2003

Governor

